

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

OSIA FERNANDEZ,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 16-CV-1308-NJR-SCW
)	
VIPIN SHAH, PHIL MARTIN, and)	
WEXFORD HEALTH SOURCES, INC.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

ROSENSTENGEL, District Judge:

This matter is before the Court on the Report and Recommendation of United States Magistrate Judge Stephen C. Williams (Doc. 57), which recommends that this Court deny the Motion for Summary Judgment filed by Defendant Wexford Health Sources (Doc. 33). The Report and Recommendation was entered on January 5, 2018. On January 22, 2018, pursuant to Administrative Order No. 188, this case was reassigned from the docket of United States District Judge J. Phil Gilbert to the undersigned district judge (Doc. 58). No objections to the Report and Recommendation have been filed.

Plaintiff Osia Fernandez (“Fernandez”) filed this action asserting that Defendants violated his constitutional rights while he was incarcerated at Robinson Correctional Center. Fernandez proceeds on the following counts:

Count One: Eighth Amendment claim against Doctor Shah for refusing to treat Fernandez’s chronic and severe allergies.

Count Two: Eighth Amendment claim against Phil Martin for failing to ensure Fernandez’s receipt of adequate medical care for his allergies after reviewing numerous grievances regarding the denial of medical care.

Count Three: Eighth Amendment claim against Wexford for depriving Fernandez of adequate medical care for his allergies by instituting policies and procedures that offer incentives to employees who stay under budget.

Wexford filed a Motion for Summary Judgment (Doc. 33) arguing that Fernandez failed to exhaust his administrative remedies before bringing suit. On January 5, 2018, Magistrate Judge Williams issued the Report and Recommendation currently before the Court (Doc. 57). Objections to the Report and Recommendation were due on or before January 22, 2018. No objections were filed.

Where timely objections are filed, the Court must undertake a *de novo* review of the Report and Recommendation. 28 U.S.C. § 636(b)(1)(B), (C); FED. R. CIV. P. 72(b); SDIL-LR 73.1(b); *Harper v. City of Chicago Heights*, 824 F. Supp. 786, 788 (N.D. Ill. 1993); *see also Govas v. Chalmers*, 965 F.2d 291, 301 (7th Cir. 1992). Where neither timely nor specific objections to the Report and Recommendation are made, however, this Court need not conduct a *de novo* review of the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985). Instead, the Court should review the Report and Recommendation for clear error. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). A judge may then “accept, reject, modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

The Court has carefully reviewed Magistrate Judge Williams’s Report and Recommendation. Magistrate Judge Williams thoroughly discussed the evidence and the undersigned fully agrees with his findings, analysis, and conclusions with respect to the issue of exhaustion. Specifically, Magistrate Judge Williams noted that the July 30,

2016 grievance discussed Wexford's policy of cost considerations which affected the treatment that Fernandez received. Magistrate Judge Williams also found that the July 18, 2016 grievance provided the prison with enough information to allow them to examine whether Wexford had a policy at play in requiring Fernandez to seek medical treatment for every outbreak of hives instead of prescribing continuing treatment such as medication for the condition. The undersigned agrees with Magistrate Judge Williams and concludes that Fernandez exhausted his administrative remedies as to Wexford with respect to his policy and practice claim.

Accordingly, the Court **ADOPTS** Magistrate Judge Williams's Report and Recommendation (Doc. 57) in its entirety and **DENIES** the Motion for Summary Judgment (Doc. 33) filed by Wexford.

IT IS SO ORDERED.

DATED: January 25, 2018

A handwritten signature in black ink, reading "Nancy J. Rosenstengel". The signature is written in a cursive style. A faint circular seal of the United States District Court for the District of Columbia is visible in the background behind the signature.

NANCY J. ROSENSTENGEL
United States District Judge